

REMARKS/ARGUMENTS

Claims 1-11 were presented for examination and are pending in this application. In an Official Office Action dated October 16, 2008, claims 1-11 were rejected. The Applicant thanks the Examiner for his consideration and addresses the Examiner's comments concerning the claims pending in this application below.

Applicant herein amends claims 1-4 to correct minor informalities and respectfully traverses the Examiner's prior rejections. No claims are currently cancelled and no new claims are added. These changes are believed not to introduce new matter, and their entry is respectfully requested. The claims have been amended to expedite the prosecution and issuance of the application. In making this Amendment, the Applicant has not and is not narrowing the scope of the protection to which the Applicant considers the claimed invention to be entitled and does not concede, directly or by implication, that the subject matter of such claims was in fact disclosed or taught by the cited prior art. Rather, the Applicant reserves the right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission.

Based on the above amendments and the following remarks, Applicant respectfully requests that the Examiner reconsider all outstanding rejections and withdraw them.

Objection to claims

Claims 1 and 4 were objected to for various uses of the word "windows" as sharing the same symbol "WID". The symbol has herein been removed from the claims.

35 U.S.C. §103(a) Obviousness Rejection of Claims

Claims 1-9 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,200,799 by Wang et al. ("Wang") in view of U.S. Patent Application Publication No. 2003/011539 by Giese et al. ("Giese"). Claims 10 and 11 were rejected as being unpatentable over Wang and Giese in view of U.S. Patent Application No. 2003/0028838 by Change et al. ("Change"). Applicant respectfully traverses these rejections in light of the following remarks and respectfully requests reconsideration.

The Federal Circuit has held many times that to establish *prima facie* obviousness of a claimed invention all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

The rejection acknowledges that Wang fails to teach or suggest the lower and upper stakes comprising a lower and upper metric vector initialization value that are independent of time. The rejection then argues that this feature is disclosed in paragraphs [0072-0079] of Giese making the application obvious. However, a review of the cited text of Giese does not appear to support the Examiner's conclusion. Indeed paragraphs [0072, 0074, 0076, 0078 and 0079] appear to indicate that the processes disclosed in Giese are indeed a function of time. The rejection points to Figures 10 and 12 of Giese for support. However Figure 10 is merely a depiction of an algorithm as is well known in the art and Figure 12 is a graphical representation of sequential computations that lacks any representative labels or metrics.

"Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with

some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in KSR)

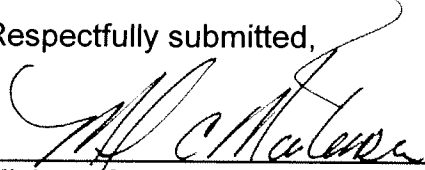
Claim 1 specifically recites, "wherein the lower stake comprises a lower metric vector initialization value independent of time and the upper stake comprises an upper metric vector initialization value independent of time..." (emphasis added). At least this feature is absent from both Wang and Giese. As the rejection has failed to show that the prior art teaches or suggests each and every claimed limitation, the prima facie case of obviousness fails. Withdrawal of the rejection is respectfully requested.

In view of all of the above, the claims are now believed to be allowable and the case in condition for allowance which action is respectfully requested. Should the Examiner be of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is requested to contact Applicant's attorney at the telephone number listed below.

No fee is believed due for this submittal. However, any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

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Respectfully submitted,



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